IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 565 of 2003.

Judgement reserved on: 24.5.2007

Date of decision: 27.6.2007.

National Insurance Company ….. Appellant.

Vs.

The Bilaspur Gramudhyog Association & ors. …. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Ms.Devyani Sharma, Advocate.

For the Respondents : Mr. Tara Singh Chauhan, Advocate, for respondent No.1.

Mr. B.C.Negi, Advocate, for respondent No.3.

Kuldip Singh, Judge.

The insurer is in appeal, against award dated 14.8.2003, passed by Motor Accident Claims Tribunal, Bilaspur, in MAC Case No. 114 of 2000, awarding Rs. 1,00,000/-, compensation to claimant for damage to its building. The insurer has been directed to deposit the compensation within two months from the date of the award, failing which interest at the rate of 9% per annum, from the date of the award, shall also be payable. The parties are referred in the same manner, as in the impugned award.

Whether the reporters of the local papers may be allowed to see the Judgment?

2. The facts in brief, as alleged in the petition are that petitioner- claimant is an association. The truck No. HIA 6835 on 24.7.2000 at village Bamta while crossing the toll tax barrier went out of control and rolled down about 25 feet and rested on the building of the petitioner causing damage to the building. The petitioner was earning Rs. 20,000/- per month, from the industry and as a result of damage to the building, the business of the petitioner suffered badly. The accident took place due to rash and negligent driving of the truck by its driver. The building was got surveyed from the loss assessor and surveyor, who prepared the abstract of loss. The truck was insured with National Insurance Company. The petitioner has claimed Rs. 3,00,000/-, compensation.

3. The respondent No.2 owner contested the petition and took preliminary objections of maintainability, according to him, respondent No. 1 is liable for the accident and not respondent No.2. The vehicle was insured and therefore, liability if any is of the insurance company. The FIR was lodged in collusion with police only for compensation purposes. On merits, damage to the building was denied. The amount claimed is excessive. The truck was being driven cautiously and not in rash and negligent manner by respondent No.1 at the time of the accident. The truck went out of road because of slippery road on account of rain. The truck fell down at some distance from the building of the petitioner and no damage was caused to the building by the truck. Respondent No.2 denied the liability.

4. Respondent No.3 filed reply and took preliminary objections of maintainability, insurance policy of the truck was denied. The respondent No.3 has no liability. The truck was being driven by an unauthorized person, who had no valid and effective driving licence to drive the class of vehicle which caused accident. The vehicle was not having valid registration, fitness certificates, valid route permit, as such it could not have been brought on road. The liability of the insurance company is limited to the extent of Rs. 6000/- in third party property damage case as per the terms and conditions of the policy and as per Motor Vehicles Act, 1988 (for short, the Act). On merits, the claim of the petitioner was denied. The insurer filed an application, under Section 170 of the Act, to contest the claim petition on all grounds which were available to respondents No.1 and 2 and this application was allowed by the Tribunal on 6.6.2003.

5. The Tribunal awarded Rs. 1,00,000/- compensation for damage to the building against respondents No. 1 to 3 and since the truck was insured, therefore, respondent No. 3 was directed to pay the compensation. The insurance company is aggrieved against the award and therefore, it has filed the above appeal.

6. I have head the learned counsel for the parties and have also gone through the record.

7. The learned counsel for the insurer has submitted that petitioner is not entitled to any compensation in view of proved facts on record. In any case, excess compensation has been awarded to the petitioner. The final assessment report Ex. RW 1/A dated 31.7.2003, has been wrongly disbelieved. The petitioner is not

entitled to more than Rs. 6000/- compensation under the policy Ex. RC and the Act. The learned counsel for the petitioner- claimant and owner of the truck have supported the impugned award.

8. PW 1 Sohan Singh Jamwal is the Secretary of petitioner. He has stated that on 24.7.2000 at about 6 p.m. truck No. HIA- 6835 while rashly and negligently overtaking rolled down on the building existed on Plot No. 2-D, Industrial Area, Bilaspur and totally damaged the back wall of the building and cracks developed in whole of the building, which caused loss of Rs. 1,50,000/-. He got the report prepared from an engineer. He has stated that building is about 20-25 feet below the National highway. The building of the factory was not insured. He admitted the suggestion that vehicle struck against the back wall of the building. PW 2 Sanjay Kumar has stated that he is holding a degree in Civil Engineering. He is working as Junior Engineer on daily wage basis in HPPWD since 1990. He prepared the General Abstract of cost Ex. PB of the factory, valuation of buildings Ex. PC, abstract of cost Ex. PD, detail of measurement Ex. PE, abstract of cost (demolition) Ex. PF, detail of measurement Ex.PG and Ex. PH blue print of building. According to him, the loss is of Rs. 1,32,210/-.

9. PW 3 Mohinder Singh is the motor mechanic having workshop at village Bamta near I.T.I. He has stated that on 24.7.2003, truck No. HIA 6835 was going from Bilaspur to Ghagas and was loaded with fly-ash. The truck driver could not negotiate the curve as a result of which the truck rolled down and fell on the building of the petitioner. He lodged the FIR Ex. PA of the accident.

10. RW 1 Deepak Sood has stated that he has been working for the last 18 years as Surveyor and loss assessor with the insurance company. He is Mechanical Engineer. In 1982 he has done his diploma from Polytechnic Chandigarh and thereafter he appeared in AMIE papers. He surveyed Bilaspur Gramaudyog building. Ex. R-1 to Ex. R-12 are the photographs and report prepared by him is Ex. RW 1/A. He inspected the spot on 5.7.2003. He has prepared Ex. RW 1/A as per PWD schedule rates of 1989, but has not stated so in the report. The report Ex. RW 1/A was prepared by him on 31.7.2003. Counsel for respondents No.1 and 2 tendered in evidence driving licence Ex. RA, registration certificate of the truck Ex. RB and insurance policy Ex. RC.

11. It has come on record that the accident took place on 24.7.2000 and FIR No. 166 dated 25.7.2000 Ex. PA was got registered by PW 3 Mohinder Singh. Truck No. HIA 6835 rolled down about 25 feet from the road. PW 3 Mohinder Singh is an eye witness and he has specifically stated that accident had taken place due to rash and negligent driving of the driver of the truck. The driver and the owner of the truck have not come in the witness box to rebut this evidence. The Tribunal has appreciated the evidence on record and has rightly come to the conclusion that accident has taken place due to rash and negligent driving of the driver of truck No. HIA-6835 and such findings are affirmed. The truck was insured vide policy Ex. RC. Respondent No.1 was having driving licence Ex. RA. On the licence, there is an endorsement of driving HTV dated 8.1.1998. Ex. RB is the registration certificate of the truck. The insurance company has not

proved anything contrary. It is thus held that the driver was having a valid and effective driving licence for driving the type of the vehicle, which was involved in the accident and the vehicle was duly insured vide policy Ex. RC with the insurer.

12. The next question is the damage suffered by the building and the entitlement of the petitioner. The petitioner has claimed damage under two heads; firstly loss of business, secondly damage to the building. So far as the claim of the petitioner under first head loss of business is concerned, the PW 1 has stated that on account of the damage to the building petitioner has suffered business loss to the extent of Rs. 25000/- per month. The Tribunal, under Section 166 of the Act has the jurisdiction to grant compensation on account of death, bodily injury and damage to the property. In the present case, there is no claim regarding death or bodily injury to a person. The claimant has claimed loss of business and damage to the property. The loss of the business and damage to the property are entirely two different claims.

13. In FAO (MVA) No. 456 of 2000 titled **Oriental Insurance Co. Ltd.** vs. **Sh. Balwant Singh and others**, decided on 25.10.2005, one of the issues for consideration before the learned Single Judge was whether petitioner in that case who was awarded Rs. 30,000/- as consequential loss due to the fact that the truck remained of the road for a period of three months was entitled to that loss. The learned Single Judge has held as follows:-

> "Initially under the provisions of the 1939 Act no claim for compensation in respect of property damage alone were maintainable. Thereafter, the Act was

amended and the damage to 3rd property loss could also be claimed under the provisions of the Motor Vehicles Act but the limit of Insurance was Rs 2000/-. After the amendment in 1988 the Insurance Company is bound to cover 3rd party property damage loss up to Rs. 6000/- only. Any coverage of loss beyond the amount of Rs. 6000/- will have to be governed by the terms of the policy. In the present case the policy specifically excludes consequential loss. The Motor Vehicles Act only makes it compulsory to give insurance coverage up to Rs. 6000/-. Therefore, the damages in excess of Rs. 6000/- in so far as they are not covered under the terms of the policy have to be paid by the owner.

The question which arises is whether even the owner should be made liable to pay this amount under the Motor Vehicles Act or not. In my view, the intention of the legislature was only to grant jurisdiction to the Motor Accident Claims Tribunal to award damages for the loss to the property. The consequential business loss could not have been assessed or awarded by the Tribunal. The loss caused due to the vehicle remaining idle is not damage to the property but loss to the owner. In my opinion the Claims Tribunals constituted under Section 165 of the Act have no jurisdiction to entertain such claims. Section 175 of the Act bars the jurisdiction of the civil court only with respect to claims for compensation which can be adjudicated upon by the Claims Tribunals. The loss to the business cannot be termed to be damage to the property and in my humble opinion is not covered under Section 165 of the Act.

While taking this view I am strengthened by the fact that the Tribunals constituted under the Act are not fettered by the provisions of the Evidence Act. The Tribunal is not required to have a detailed inquiry in the matter. After the introduction of the provisions of Section

163-A in the Act the intention of the legislature is to make the mode of assessment and recovery faster and less cumbersome. This can never be done in case consequential loss is also required to be covered. The assessment of consequential loss because of its nature will entail the recording of detailed evidence and a civil Court is best suited for this purpose. It is also settled position of law that if two views are possible then the ouster of the jurisdiction of the civil court should not easily be inferred. It is only if the provisions are clear and unambiguous that the jurisdiction of the civil Court should be excluded. In the present case, I do not feel that the jurisdiction of the Civil Court to entertain disputes with regard to consequential loss arising due to damage to property can be excluded. Therefore, in my opinion the Tribunal has no jurisdiction to entertain and adjudicate upon the claims relating to consequential loss arising out of damage to the property. Its jurisdiction is confined only to the damage actually caused to the property."

14. In view of **Oriental Insurance Co. Ltd.** vs. **Sh. Balwant Singh and others** (supra), the petitioner is not entitled to any amount on account of loss of business due to damage to the building as a result of rolling down of truck on the building.

15. The petitioner has also claimed damage to the building due to accident. Learned counsel for the insurer has submitted that under the policy and the Act, the insurer is liable to pay only Rs. 6000/- on account of third party property damage. She has relied on Section 147 (2) (b) of the Act for advancing this argument. No doubt, under the Act, the statutory liability of the insurer is only to the extent of Rs. 6000/- but there is no bar to the insurer to cover more risk on

account of third party property damage while insuring the vehicle. In the present case, the insurer has charged Rs. 75/- extra for third party property damage. The insurer has not explained why even after charging Rs. 75/- extra, the insurer is not liable to pay more than Rs. 6000/- toward third party property damage resulting from the accident involving vehicle covered by policy Ex. PC. In **Oriental Insurance Co. Ltd.** vs. **Sh. Balwant Singh and others** (supra) the insurance company had charged Rs. 75/- extra and in those circumstances, the learned Single Judge of this court has allowed third party property damage amount to Rs. 42,454/- in favour of the owner of the truck No. HIB-4653 which was damaged by truck No. HP-34-0421 insured with the insurance company. Therefore, in my view the insurer is liable to pay damage to the petitioner on account of damage to the building caused by truck No. HIA-6835.

16. The last question is the quantum of compensation. The petitioner has produced PW 2 Sanjay Kumar, Civil Engineer, who inspected the site and prepared his report regarding damage to the building. The abstract of cost is Ex. PB. As per Ex. PB, the petitioner has suffered damage of Rs. 1,13,420/-. A sum of Rs. 18790/- is required for demolition of the existing building. According to PW 2 the petitioner has suffered total loss of Rs. 1,32,210/-. RW 1 Deepak Sood in his report Ex. RW 1/A has come to the conclusion that the petitioner has suffered loss of Rs. 3611/- only. This report cannot be believed for more than one reason. RW 1 Deepak Sood is not a Civil Engineer. He is diploma holder in Mechanical Engineering. Therefore, he cannot be deemed to be as an expert in Civil

Engineering. The accident took place on 24.7.2000. As per statement of RW 1, he visited the spot on 5.7.2003 and prepared report Ex. RW 1/A on 31.7.2003. Therefore, it is clear that report Ex. RW 1/A does not reveal true picture immediately after the accident. The petitioner is not expected to remain idle for three years. The petitioner must have taken steps for improving the building during this period. Therefore, report Ex. RW 1/A cannot be relied for assessing the damage to the property. PW 2 Sanjay Kumar, has assessed the damage at Rs. 1,32,210/-, vide abstract of cost Ex. PB. The petitioner while reconstructing, repairing the building will use the material of the existing building. Therefore, the Tribunal has rightly allowed damage to the property at Rs. 1,00,000/- in all. The insurer has failed to make out any case for interference. The conclusion drawn by the Tribunal for awarding Rs. 1,00,000/- compensation towards damage to the property of the petitioner requires no interference by this Court. The petitioner is however, entitled to 9% per annum interest on Rs. 1,00,000/- from the date of filing of the petition till payment, realization.

17. In view of above discussion, the appeal is dismissed. The amount of Rs. 1,00,000/- awarded to the petitioner against the respondents is confirmed. The National Insurance Company shall pay the award amount alongwith 9% per annum interest from the date of the filing the petition till payment, realization of the amount. No costs.

June 27, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**